

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-208461.2

DATE: June 16, 1983

MATTER OF: Schindler Haughton Elevator Corporation

DIGEST:

1. Where agency acknowledges all facts necessary to establish validity of protest and proposes to take corrective action, it is unnecessary for GAO to consider whether protest was timely.
2. Where invitation for bids called for a single overtime call-back service price and the low bid contained two prices, the bid is not nonresponsive, but, rather, an ambiguous bid which may be accepted because the ambiguity does not affect the evaluation, the bid is low under either interpretation, and the low bidder agrees to accept the interpretation which is most favorable to the Government.
3. Where GAO agrees that contract was improperly awarded, GAO will not review agency proposal to terminate the contract for the convenience of the Government.

Schindler Haughton Elevator Corporation (Schindler Haughton) protests any award to Fairhall Elevator, Inc. (Fairhall), under invitation for bids (IFB) No. GS-05B-42233, issued by the General Services Administration (GSA), for elevator maintenance service. For the reasons stated below, the protest is dismissed in part and denied in part.

The IFB called for award in the aggregate for two items--monthly service (12 months) and hourly overtime call-back services (10-hour estimate). Fairhall submitted the low monthly service bid of \$1,125 (\$13,500) and Schindler Haughton was the next low monthly service bidder at \$2,377 per month (\$28,524). Fairhall's response for the overtime services was "\$23.00 time and half, \$46.00 double time." The contracting

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officer determined that the submission of two overtime service prices, rather than the one price requested by the IFB, rendered the Fairhall bid nonresponsive because it did not allow all bids to be evaluated on an equal basis. GSA then awarded the contract to Schindler Haughton.

Fairhall protested to this Office, arguing that it was required to provide two overtime rates depending on the time of service pursuant to a labor agreement. GSA then determined that Fairhall's bid was ambiguous, but not nonresponsive because Fairhall had obligated itself to perform the overtime services. Citing Polycast Technology Corporation (Polycast), B-203871, November 2, 1981, 81-2 CPD 373, involving a prompt-payment discount ambiguity, GSA stated that the ambiguity did not require a determination of non-responsiveness because the ambiguity does not affect the evaluation, the bid is low under either interpretation, and the low bidder agreed, after bid opening in verifying its relatively low bid, to accept the interpretation most favorable to the Government. GSA recommended that the contract with Schindler Haughton be terminated for the convenience of the Government and the contract awarded to Fairhall, whereupon this protest followed.

Schindler Haughton contends that Fairhall's protest was untimely because it concerned an impropriety in the IFB, the requirement that only one overtime price be stated, and thus should have been filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1983). However, because the contracting agency acknowledges all the facts necessary to establish the validity of the protest and there is no bar to a contracting agency proposing appropriate corrective action, we need not consider the timeliness of Fairhall's protest. International Business Machines Corporation, B-197188, October 21, 1980, 80-2 CPD 302.

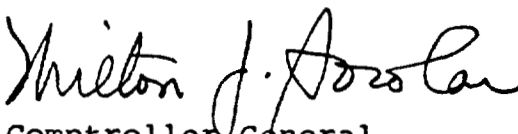
Schindler Haughton argues that Fairhall's bid was not ambiguous since it was susceptible to only one interpretation, making the Polycast rule inapplicable and rendering the bid nonresponsive. Schindler Haughton further claims that even if Fairhall's bid should be accepted under the Polycast rule, its contract should not be terminated for convenience.

GSA argues that, from the bid, it could not determine whether Fairhall was (1) offering a choice of two rates, or (2) offering two rates for times which could not be determined from the bid itself, thus making the Polycast rule applicable. GSA further claims that a termination for convenience is appropriate considering that its contract award to Schindler Haughton was a serious error, that the contract costs were more than double Fairhall's, and that the overtime rates have an insignificant impact on the cost.

Of particular significance, we note that Fairhall unequivocally offered to provide the overtime services. Further, we agree with GSA that Fairhall's bid is ambiguous and not nonresponsive. Although Fairhall asserted after bid opening that it intended to offer two overtime rates, GSA, in determining whether Fairhall's bid was responsive, had to discern Fairhall's intent from the face of the bid at bid opening. See Isometrics, Inc., B-208898, December 30, 1982, 82-2 CPD 588. At bid opening, GSA was unaware of the collective bargaining agreement and reasonably found eventually that Fairhall's bid was susceptible of two interpretations. Under either interpretation of the ambiguity, involving a very small percentage of the total price, Fairhall's bid was low, and Fairhall agreed to accept the interpretation most favorable to the Government. Therefore, the Polycast rule applies, and the Fairhall bid was responsive.

As to whether Schindler Haughton's contract should be terminated as in the best interests of the Government, we will review the reasonableness of a Government decision not to terminate. However, as stated above, where a contracting agency acknowledges all the facts necessary to establish the validity of a protester's objections, there is no bar to a contracting agency proposing corrective action where it deems the circumstances to be appropriate. International Business Machines Corporation, supra. Therefore, since GSA acknowledged the validity of Fairhall's position, and we agree, we will not consider GSA's proposal to terminate the contract with Schindler Haughton.

Accordingly, the protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States